

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

LOUIS T. DELUCIA, as receiver,	:	CIVIL ACTION NO. 04-5860 (MLC)
	:	
Plaintiff,	:	<b>MEMORANDUM OPINION</b>
	:	
v.	:	
	:	
BIANCONE & WILINSKY, LLP, et al.,	:	
	:	
Defendants.	:	
_____	:	

**THIS MATTER ARISING** on the Court's order to show cause why the action should not be remanded to New Jersey Superior Court, Mercer County, for lack of jurisdiction under 28 U.S.C. § ("Section") 1332 and improper removal under Section 1441(b) (12-10-04 Ord. to Show Cause); and the plaintiff advising that he (1) is a New Jersey citizen, and (2) has amended the complaint to add a New Jersey citizen as a defendant, and "has therefore destroyed diversity in this case" (12-15-04 Pl. Letter); and the defendant Biancone & Wilinsky, LLP ("BWLLP"), advising that (1) "due to the filing of this amended complaint, diversity jurisdiction has been lost" and (2) it "consents to the remand of this matter back to state court" (12-20-04 Speziale Letter); and the Court noting that "[i]f after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court," 28 U.S.C. § 1447(e), see Kabakjian v. United States, 267 F.3d 208, 212 (3d Cir. 2001); and

the Court noting further that there is no need to address the plaintiff's motivation in adding a new defendant, as BWLLP consents to remand, cf. Kahhan v. Mass. Cas. Ins. Co., No. 01-1128, 2001 WL 1454063, at \*2 (E.D. Pa. Nov. 14, 2001) (stating – in remanding action – Section 1447(e) confers “substantial discretion” on court to decide whether to allow joinder of “diversity-destroying defendant”), Stransky v. Am. Isuzu Motors, 829 F.Supp. 788, 790-91 (E.D. Pa. 1993) (stating – in granting motion to remand – defendant has “heavy burden of establishing either that plaintiffs have no reasonable possibility of imposing liability on the non-diverse defendant, or that [the] joinder was fraudulent”); and the Court determining that this matter should be resolved now; and thus the Court intending to (1) grant the order to show cause, and (2) remand the action to New Jersey Superior Court, Mercer County; and good cause appearing, the Court will issue an appropriate order and judgment.

s/ Mary L. Cooper  
**MARY L. COOPER**  
United States District Judge